Supreme Court of the United States.

Office Supreme Court U. S.
FILED
FEB 13 1906
JAMES H. MCKENNEY, Clerk.

OCTOBER TERM, 1905.

No. 125

DANIEL RED BIRD ET AL., CITIZENS OF THE CHEROKEE NATION BY BLOOD, APPELLANTS,

vs.

THE UNITED STATES.

No. 126

THE CHEROKEE NATION, APPELLANT,

vs.

THE UNITED STATES.

No. 127

FRANCIS B. FITE ET AL., INTERMARRIED WHITE PERSONS, CLAIMING TO BE ENTITLED TO CITIZENSHIP IN THE CHEROKEE NATION, APPELLANTS,

vs.

THE UNITED STATES.

No. 128

THE PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE, APPELLANTS,

vs.

THE UNITED STATES.

(19,921, 19,922, 19,923, 19,924.)

Appeals from the Court of Claims.

Brief on Behalf of Persons Claiming Rights of Citizenship in the Cherokee Nation by Intermarriage.

Married-Out and Abandonment Cases.

WM. HENRY WHITE,
A. E. L. LECKIE,
Attorneys for Intermarried Whites.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 419.

DANIEL RED BIRD ET AL., CITIZENS OF THE CHEROKEE NATION BY BLOOD, APPELLANTS,

vs.

THE UNITED STATES.

No. 420.

THE CHEROKEE NATION, APPELLANT,

vs.

THE UNITED STATES.

No. 421.

FRANCIS B. FITE ET AL., INTERMARRIED WHITE PERSONS, CLAIMING TO BE ENTITLED TO CITIZENSHIP IN THE CHEROKEE NATION, APPELLANTS,

vs.

THE UNITED STATES.

No. 422.

THE PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE, APPELLANTS,

vs.

THE UNITED STATES.

(19,921, 19,922, 19,923, 19,924.)

Appeals from the Court of Claims.

Brief on Behalf of Persons Claiming Rights of Citizenship in the Cherokee Nation by Intermarriage.

Married-Out and Abandonment Cases.

Further Assignment of Errors.

In addition to the assignment of errors set out in the brief filed by Messrs. William T. Hutchings and James S. Davenport (p. 5), the Court of Claims erred in holding—

> "that those white persons who intermarried with Delaware or Shawnee citizens of the Cherokee Nation, either prior or subsequent to November 1, 1875, and those who intermarried with Cherokees by blood, and subsequently being left a widow or widower by the death of the Cherokee wife or husband, intermarried with persons not of Cherokee blood, and those white men who, having married Cherokee women and subsequently abandoned their Cherokee wives, have no part or share in the Cherokee property, and are not entitled to participate in the allotment of the land or in the distribution of the funds of the Cherokee Nation or people, and are not entitled to be enrolled for such purpose,"

where the facts of such remarriage or abandonment have not been established by the means provided by Cherokee law.

Statement of the Case.

In the opinion of the Court of Claims, by the Chief Justice, in discussing the question of the "married-out and abandonment cases" (Record, p. 41), he says that these are—

> "claimants who allege on the one hand, that they became citizens of the Cherokee Nation by intermarriage, but *concede*, on the other hand, that

> they have since married persons, white persons, having no rights of Cherokee citizenship by blood, or that they have abandoned their Cherokee wives." (The italics are ours.)

An examination of the record will show that the Court of Claims erred in holding that these were *conceded* as facts. This case was tried in the Court of Claims on the pleadings and stipulations filed therein, said stipulations, by the opinion of said court, to stand as the findings of the court for the purposes of appeal (Record, p. 43). These stipulations show (Record, p. 49) merely the use of the words "*of whom it is alleged they were afterward remarried*," etc., and "but who, *it is alleged, have abandoned*," etc. The further facts, in both of these classes of cases, are set out on page 49 of the record, as follows:

> "No proceeding was ever instituted or had against any of these claimants in, nor was there any adjudication had concerning these claimants by the Circuit Court of the Cherokee Nation, nor any other court; but the Commission to the Five Civilized Tribes and the Secretary of the Interior refused to enroll these claimants, independent of the question as to whether they might otherwise be entitled to enrollment, basing such refusal upon their interpretation of the laws of the Cherokee Nation and *testimony of witnesses before said Commission as to the alleged facts of such death and remarriage, . . . and testimony of witnesses before said Commission as to the facts of such abandonment.*"

Acquisition and Forfeiture.

The opinion of the Court of Claims loses sight of the distinction between *acquisition* and *forfeiture* of citizenship. The example given in that opinion is as follows (Record, p. 41):

> ". . . If some such person, resident in the

> United States and therefore owing a local allegiance to this Government (*Carlisle & Henderson's case*, 16 Wall., 147) should bring an action in this court and the Government should file a plea to the jurisdiction averring that the claimant was an alien not entitled to maintain an action against the Government of this country within the intent and meaning of Revised Statutes, section 1068, could such a claimant turn around and say that the question of his citizenship could be inquired into only by office found? Assuredly not."

But this constitutes an entirely different proposition of law from the case at bar, where persons *admittedly citizens* are alleged to have *forfeited* that right.

In the illustration of the chief justice the plaintiff might well be required to establish the *acquisition* of his citizenship in the way specified. The question at bar is, however, what is required to show a *forfeiture* of citizenship by one who has unquestionably acquired such status.

We urge that the commission to the Five Civilized Tribes is limited, in its inquiry in these matters, to the records of the Cherokee Circuit Court mentioned in section 669 of said laws; that it may consider as evidence of abandonment or remarriage any judgment or decree of said court, but may not consider as evidence the testimony of witnesses or the admissions of the applicants.

The requirements to become a citizen by marriage with a Cherokee are very stringent, and are set forth in sections 659 to 664, inclusive, and in effect are a license to be issued only upon affidavit of certain qualifications; a certificate of good character signed by ten citizens and the clerk of the county court; a ten-dollar fee; an oath to support the constitution and laws of the Cherokee Nation; a particular form of marriage; a penalty of $100 *qui tam*, and a record of the marriage certificate. All of this is required to become a citizen by marriage, or, as

as commonly expressed, to "marry in." The act provides in the following sections for what offenses the citizenship thus acquired may be declared forfeited.

"Sec. 665. Every adopted citizen of the Cherokee Nation, by intermarriage or otherwise, who shall use the intercourse law or laws (as they are termed), in the prosecution of a Cherokee Indian, for any criminal offense committed within the limits of the Cherokee Nation, shall forfeit his rights of citizenship to the same, and be subject to be dealt with as other intruders in the country, and shall be removed out of this nation.

"Sec. 666. Should any man or woman, a citizen of the United States or of any foreign country, become a citizen of the Cherokee Nation by intermarriage, and be left a widow or widower by the decease of the Cherokee wife or husband, such surviving widow or widower shall continue to enjoy the rights of citizenship, unless he or she shall marry a white man or woman or person (as the case may be) having no rights of Cherokee citizenship by blood; in that case, all of his or her rights acquired under the provisions of this act shall cease.

"Sec. 667. Every person who shall lawfully marry under the provisions of this act, and afterwards abandon his wife, shall thereby forfeit every right and privilege of citizenship of this nation."

Section 668 declares forfeitures of property rights of the husband for abandonment of the wife as follows:

"Sec. 668. Property of every description, possessed within the limits of the Cherokee Nation by an adopted citizen, shall, in case such adopted citizen abandon his wife without lawful cause, be the absolute property of such wife, or wife and her children. But whenever such abandonment shall be planned or effected by the wife for the purpose of ridding herself of her husband, then and in that case such wife shall be entitled to only such property as shall be awarded, upon application of either party for divorce, by the court having jurisdiction."

Nor was the legislature silent as to the *means* of declaring and enforcing these forfeitures. A *complete, exclusive,* and well-defined procedure is given by section 669, as follows:

> "Sec. 669. The circuit court shall have authority to hear and determine all cases that may be brought before it by any person or by the solicitor of the district wherein it may be alleged that a citizen of the United States or of any other government, adopted by intermarriage under the laws of the Cherokee Nation, has forfeited his rights to citizenship in said nation by acts which declare such forfeiture. Proceedings in such cases shall be by citation if the party be resident in the Cherokee Nation, or by thirty days' notice of such proceeding in the *Cherokee Advocate,* and be conducted as are civil suits before such courts. On the finding of verdict by the jury against such person, it shall be the duty of the clerk of the court to notify the principal chief of such finding, and it shall be the duty of the principal chief to make known such finding to, and call on, the United States Indian agent for the removal of such person beyond the limits of the Cherokee Nation. It shall not be lawful thereafter for any clerk to issue a marriage license, or permit, to reside in the Cherokee Nation, in any capacity whatever, to any person so declared to have forfeited his rights of citizenship in the Cherokee Nation" (December 6, 1890).

It is a civil cause, to be conducted regularly, by jury trial after regular process, on pleadings which must aver at least that the defendant has forfeited his rights to citizenship in said nation by acts which declare such forfeiture.

Nothing is to be done, however, except "on the finding by the jury against such person," when the judgment takes effect in a notice by the clerk to the chief, who in turn calls upon the United States Indian agent to enforce what is equivalent to outlawry—a punishment so severe

that it has been abolished in English law. The defendant is to be put out of the nation, deprived of the right to reside in the nation, or to remarry there. Is it any wonder that such a penalty is not under the law to be inflicted except upon trial by jury in the most regular of proceedings?

A Condition Subsequent.

The applicants became citizens lawfully. There is no condition precedent. The charge of abandonment presupposes a proper marriage and the consequent citizenship of the applicant. The remarriage after the death of the first wife likewise concludes that the applicant was a citizen by his first marriage. The act complained of is admittedly one happening after the citizenship was acquired. The condition complained of is a condition subsequent to the vesting of the right.

Nor can it be doubted that it is a valuable right, involving as it does lands and moneys, legal status, subjection to taxation, laws, and courts.

A Grant of Sovereignty.

The right is by grant of the sovereignty of the nation. The nation made them citizens. Without its consent they could not have become citizens, or, once citizens, have renounced allegiance; and we insist, first, that if section 669 had not provided a mode of forfeiture, still the applicants continue to be citizens until a judicial or legislative determination of that status has been made by or on behalf of the Cherokee Nation.

Congress recognized this principle in the act of June 28, 1898, section 21, which is the sole authority of the Commission to act at all. The Commission is directed to enroll "such intermarried white persons as may be entitled to citizenship *under Cherokee laws.*"

These applicants were made citizens by the sovereign power of the Cherokee Nation and continue to be citizens until their rights are forfeited under Cherokee laws, *by the Cherokee Nation.* If it be argued that Congress has plenary power to forfeit these rights, the answer is that Congress has not done so.

This forfeiture is to the nation; the nation's attorneys are insisting on it; the valuable rights revert to the nation. Can the nation take the benefits of a forfeiture without some adjudication of the right?

Office Found.

From the earliest times the doctrine of office found has denied such a procedure.

> "At common law an alien may take realty by act of the grantor and hold it until 'office found,' that is, until the fact of alienage is authoritatively established by a public officer *upon an inquest held at the instance of the Government*" (Anderson's Law Dictionary).
>
> "These inquests of office were devised by law as an authentic means to give the king his right by solemn matter of record, without which he, in general, can neither take nor part from anything. For it is a part of the liberties of England, and greatly for the safety of the subject, that the king may not enter upon and seize any man's possession upon bare surmises *without the intervention of a jury.*" Blackstone's Com., Book 3, star p. 259.
>
> Phillips *vs.* Moore, 100 U. S., 212.
>
> Hauenstein *vs.* Lynham, 100 U. S., 484.
>
> Fairfax's Devisee *vs.* Hunter's Lessee, 7 Cranch, 604, 621, 622.
>
> New York Indians *vs.* United States, 170 U. S., 1, 24, 25.

". . . But there is one reason assigned by every judicious compiler which, from its good

sense and applicability to the nature of our Government, makes it proper to introduce it here. I copy it from Bacon, not having had leisure to examine the authority which he cites for it. 'Every person,' says he, 'is supposed a natural-born subject that is resident in the kingdom, and that owes a local allegiance to the king, till the contrary be found by office.'" Governeur's Heirs *vs.* Robertson, 11 Wheat., 332, 355, 356.

Status and Collateral Attack.

The same principle is found in the rule that only the sovereignty may dissolve a corporation, though in fact it may have done acts which work a forfeiture under express provision of law. It continues to be a corporation until a direct proceeding is brought by the sovereignty to dissolve it.

Angel and Ames, sec. 774, and cases referred to. Frost *vs.* Frostburg Coal Co., 24 How., 278, 284.

Must Be Direct Proceedings.

The application of the principle above was made in the four cases following, which are exactly in point. These cases all arose under the act of Congress approved March 3, 1865, which provided:

"All persons who have deserted the military and naval services of the United States, who shall not return to said service, or report themselves to a provost marshal, within sixty days after the proclamation hereinafter mentioned, *shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship,* and their rights to become citizens."

Compare this penalty with that of sections 666 and 667, which provided:

"In that case, all his or her rights (of citizenship)

> acquired under the provisions of this act *shall cease.*
>
> "Shall thereby FORFEIT EVERY RIGHT AND PRIVILEGE OF CITIZENSHIP of this nation."

In Huber *vs.* Reiley, 53 Pa. St., 112, the plaintiff offered to vote, was challenged, and was sworn according to law by the defendant, who was a judge of election. On examination the defendant found that plaintiff was a deserter from the army, and that under the act of March 3, 1865, he had forfeited his United States citizenship. Under the Pennsylvania law only citizens of the United States are qualified voters, and the defendant refused to allow plaintiff to vote. For this refusal plaintiff sued, and the question of law raised in the case is the limitation of inquiry by a judge of election on the question as to whether plaintiff was a citizen and particularly as to the forfeiture of citizenship under the act. The court held that the act is highly penal, is to be strictly construed, and can be administered only "by a judicial tribunal authorized to adjudicate it," or by due process of law; that the forfeiture must be "imposed by the same tribunal that was authorized to impose the other penalties for the offense," for which "there can be no substitute," and that he "not having been sentenced to the penalties and forfeitures of the law, was entitled to vote."

In Gotchues *vs.* Matheson, 58 Barbour (N. Y.), 152, the facts are identical with those in Huber *vs.* Reiley, supra, the hearing being upon demurrer to the defense. The court said that:

> "Their duty is to ascertain who are citizens; not to adjudge, declare, and enforce forfeiture of citizenship."
>
> " . . . *They instantly believed the act itself was sufficient to forfeit citizenship, and therefore excluded his vote, whereas they should have gone further and ascertained if the plaintiff had been*

convicted in any court of being a deserter, and of failing to return. If he had been so convicted, his vote should have been excluded; if not, it should have been received. This act doubtless contemplated a trial and conviction before a court martial, and thus to enforce the forfeiture (Huber *vs.* Reiley and others, 53 Penn., 112). . . . *They can determine who are citizens, but they can not adjudge and declare, as an original* ADJUDICATION, that the plaintiff's citizenship has been forfeited by the commission of an offense. They can receive as evidence such an adjudication made by another court, and give effect to its provisions by rejecting the vote, and thus depriving a person of the privilege of citizenship; but further than this I do not see as they can go.

"*But there was no evidence of conviction produced before the inspectors. For that reason there was no evidence of forfeiture of citizenship, and the inspectors had no right to exclude the vote.*"

State *vs.* Symonds, 57 Me., 148: The defendant was indicted for illegal voting. It is claimed by the Government that the defendant was a deserter from the United States Army and had thereby forfeited his right to vote under the act of March 3, 1865, and in order to prove the desertion the Government offered to prove the *admission of the defendant* that he had deserted, and offered to introduce the roll of the company to which he had belonged at the time of the desertion. The evidence was objected to, but the trial court overruled the objection, and the evidence was presented to the jury. The verdict was guilty. On appeal the court says the crime of deserting the Army of the United States is exclusively an offense against the Government of the United States, and can only be inquired into and punished through the courts of the United States having jurisdiction thereof. The court said:

"Any adjudication upon this offense, by State

> tribunals, would be *coram non judice;* . . . *The record of such conviction is the only legal evidence of the fact of desertion before any tribunal where this is brought into question* (Huber *vs.* Reiley, 53 Penn.) . . . for it is not only the right of suffrage, but *all the rights of citizenship, present or prospective,* that this act of Congress visits with its *terrible disabilities and penalties.* . . . Exceptions to the ruling of the court were sustained."

Severance *vs.* Healey, etc., 50 N. H., 448, follows the decisions above.

The above reasoning of the courts is irresistible. A man's citizenship is not forfeited by the mere commission of an act; it continues until an adjudication is had on the act under the law before the proper tribunal, just as a corporation continues to exist until adjudication is had by *quo warranto,* and just as an alien continues to hold title until office found. Comparison of reasons is asked.

The Rule Applied.

Citizenship is a matter between the Government and the citizen who remains a citizen until the Government declares the forfeiture. The duty of the Commission is to enroll only those who are citizens under Cherokee law, just as the judges of election were to permit only citizens of the United States to vote. The right of inquiry here, as there, is limited to the question whether they *became* citizens.

> "There are, it is true, many things which they may determine, such as the age and residence of a person offering to vote, whether he has paid taxes, and whether, if born an alien, he has a certificate of naturalization (Huber *vs.* Reiley, *supra*)."

These things pertain to the *acquisition* of citizenship, and the Commission may then inquire into the fact of

marriage, its forms, residence, disability to marry or become a citizen, but whether he has committed an offense—

> "and has, as a consequence, forfeited his right, is an inquiry of a different character. Id.
>
> "Their duty is to ascertain who are citizens; not to adjudge, declare, and enforce forfeitures of citizenship." Gotchues *vs.* Matheson, *supra.*
>
> "They can determine who are citizens, but they can not adjudge and declare, as an original adjudication, that the plaintiff's citizenship has been forfeited for the commission of an offense. They can receive as evidence such an adjudication made by another court . . . but further than this I do not see as they can go." Id.

Premise Reasserted.

We here repeat our position, that even if section 669 had never been enacted, the Commission has no authority to inquire into *facts* that may work a forfeiture of citizenship; but their inquiry is limited to the records of an adjudication in a proper tribunal between the Cherokee Nation and the citizen.

Statutory Remedy Exclusive.

But section 669 prescribes the tribunal and the procedure. From the earliest time it has been held that where—

> "a new offense is created by statute, and the special jurisdiction out of the course of the common law is prescribed, it must be followed. If not strictly pursued, all is a nullity, and *coram non judice;* and objections may be taken in any stage of the cause. Hartley *vs.* Hooker, 17 Geo. III., B. R., 1777, reported in 2 Cowp., 523."

That no other proceeding than the one mentioned in

section 669 is lawful will be found upon examination of the following authorities:

Potter's Dwarris on Statutes, p. 275, note 5, and cases cited.

Wait's Actions and Defenses, vol. 2, p. 109, sec. 19; also vol. 1, p. 42, sec. 8.

Endlich on Interpretation of Statutes, sec. 433, note 71.

R. R. Co. *vs.* Tel. Co., 112 U. S., 306, 310.

Section 669 not only directs the manner of procedure, but it also names the particular court in which the proceeding must be brought.

If the enforcing tribunal is specified, the designation forms part of the remedy and all others are excluded.

Potter's Dwarris on Statutes, p. 275, note 5.

Dudley *vs.* Mayhew, 3 N. Y. R., 9.

Almy *vs.* Harris, 5 John., 175.

Miller *vs.* Taylor, 4 Burr, 2322.

Smith *vs.* Lockwood, 13 Barb., 209.

Under Cherokee law, therefore, there was but one way by which applicant's citizenship might be declared forfeited, that is, by the proceeding named in section 669 and by the court named in that section. Where there is no evidence of any such proceeding having been instituted in that court against an applicant, he has not forfeited his rights of citizenship and is entitled to citizenship under Cherokee law. This proposition we deem so elementary as not to need further argument.

We fail to see how any person can come to any conclusion but that the Commission to the Five Civilized Tribes has no jurisdiction to investigate this question under Cherokee law, for even if Congress had intended the Commission so to do, then Congress has failed to provide it with the means. The

Commission has no authority to issue a citation, or to conduct the case as civil suits were conducted before the Cherokee Circuit Court. IT HAS NO JURY, and the forfeiture is to be operative only after verdict by the jury. No proceeding has been brought before it by any person, or by the solicitor of the district. In fact, although the Cherokee law provides in section 669 the only way by which the forfeiture mentioned in sections 667 and 668 is to be enforced, none of those things prescribed by section 669 have been or could have been done by the Commission.

The Supreme Court of the United States did not hesitate, in Railroad Co. *vs.* Telegraph Co., 112 U. S., 310, to limit its own authority, when it said:

> "The remedy is statutory only, and every court which takes jurisdiction for its enforcement is limited in its powers by the statute under which alone it can act."

This being so as to the Supreme Court of the United States, is not the Commission to the Five Civilized Tribes likewise limited?

Commission Denied Jurisdiction.

The Commission is not a court of general jurisdiction, and every presumption is against its jurisdiction. It must have the letter of the law in support of its jurisdiction, else it has none. Authorities, it is believed, are not needed in support of that proposition.

Jurisdiction to try questions of forfeiture of citizenship was in the Cherokee Circuit Court originally. By the act of June 28, 1898, that court was abolished and its jurisdiction was conferred, not upon the Commission, but upon "the United States Court in said Territory." Section 28 of the act of June 28, 1898 (30 Stat. L., pp. 495–504), provides:

> "Sec. 28. That on the first day of July, eighteen

> hundred and ninety-eight, all tribal courts in Indian Territory shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and all civil and criminal causes then pending in any such court shall be transferred to the United States court in said Territory by filing with the clerk of the court the original papers in the suit: *Provided*, that this section shall not be in force as to the Chickasaw, Choctaw, and Creek tribes or nations until the first day of October, eighteen hundred and ninety-eight."

If there were any doubt left as to the jurisdiction of the Commission section 28 removes it by expressly giving the jurisdiction to the court instead of the Commission, and here the express letter of the law denies jurisdiction to the Commission.

It is respectfully submitted:

1. That the question of the status of citizenship is one between the citizen and the nation, which status, once established, continues until the forfeiture is made a solemn matter of record by judicial act or special private legislative act by the nation, declaring forfeiture of the citizenship of the individual.

2. That acts declaring forfeiture of citizenship are highly penal, and are to be strictly construed in favor of the citizen.

3. That independently of section 669 a forfeiture can not be declared as an original adjudication by the Commission to the Five Civilized Tribes, and that the Commission may consider only record evidence of and adjudication by a competent tribunal had in a cause between the nation and the citizen, and may not consider even the admissions of the applicants of the facts themselves, which are declared by the law to work a forfeiture. The

acts themselves do not forfeit citizenship, but citizenship continues until adjudication on the acts under the law.

We concede the right to inquire into the facts by which applicants claim to have become citizens; but, the *status* once established, the rule as to forfeiture is as above stated.

Respectfully submitted.

WM. HENRY WHITE,
A. E. L. LECKIE,
Attorneys for Intermarried Whites.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 125

DANIEL RED BIRD ET AL., CITIZENS OF THE CHEROKEE NATION BY BLOOD, APPELLANTS,

vs.

THE UNITED STATES.

Office Supreme Court
FILED
MAR 5 190
JAMES H. McKENN

No. 126

THE CHEROKEE NATION, APPELLANT,

vs.

THE UNITED STATES.

No. 127

FRANCIS B. FITE ET AL., INTERMARRIED WHITE PERSONS, CLAIMING TO BE ENTITLED TO CITIZENSHIP IN THE CHEROKEE NATION, APPELLANTS,

vs.

THE UNITED STATES.

No. 128

THE PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE, APPELLANTS,

vs.

THE UNITED STATES.

(19,921, 19,922, 19,923, 19,924.)

Appeals from the Court of Claims.

Cherokee Constitution, Laws, Treaties, Departmental Decisions, and Acts of Congress.

Constitution and Laws of the Cherokee Nation.

An Act Authorizing the Compilation of the Laws of the Cherokee Nation.

Be it enacted by the National Council, That the Principal Chief be, and he is hereby authorized, to appoint two competent persons, one to collect and compile the laws of the Cherokee Nation now in force, and the other to translate the same into the Cherokee language.

It shall be the duty of the compiler to classify and arrange, under appropriate heads, all enactments pertaining to a particular subject; embrace in one act as far as practicable the original acts and amendments thereto, and omit all acts that have been repealed, or have become inoperative by ceasing to be applicable to existing affairs, and to prepare an index to the same.

The work above required shall be commenced and accomplished as soon as practicable; and, when completed, submitted to and approved by the Principal Chief, he shall be, and is hereby, authorized to appoint an Agent, on part of the Cherokee Nation, for the purpose of having the laws, herein authorized to be compiled and translated, correctly published in book form, to the number of one thousand copies in the English language, and one thousand in the Cherokee, as speedily as it can be done, for the use of the courts and citizens of the country. And the Principal Chief is hereby authorized to draw preferred warrants upon the National Treasury upon the certificate of the Agent, approved by the Principal Chief, to liquidate the expenses of said publication.

The compensation of the compiler and translator of the laws, as provided in this act, shall be the sum of three

hundred dollars each, when their work as hereinbefore defined, shall be completed and approved: *Provided*, that the said entire work shall be done, approved, and made ready for publication, on, or before the first day of July, 1881, and the Principal Chief is hereby authorized to draw preferred warrants accordingly.

Approved November 19, 1880.

An Act Authorizing the Translation, etc., of the Laws of 1880.

Be it enacted by the National Council, That the Principal Chief be, and he is hereby authorized, to have the laws and joint resolutions of the regular session of 1880, of the National Council, translated, and added to the English and Cherokee copies of Compiled Laws that he is already authorized to have printed, and the sum of one hundred and twenty-five dollars, or so much thereof as may be necessary, is hereby appropriated out of any money belonging to the General Fund, and not otherwise appropriated, to defray the expenses thereof, and the Principal Chief is hereby authorized to draw preferred warrants to pay for the same.

Approved December 2, 1880.

Appointment of Compiler.

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
TAHLEQUAH, *December 24, 1880.*

Capt. JOHN L. ADAIR, Tahlequah, C. N.

Sir: In accordance with the act of the National Council "authorizing the compilation of the laws of the Cherokee Nation," approved November 19, 1880, you are

hereby respectfully informed that you have been appointed to do the labor and receive the compensation of compiler, pursuant to the provisions of said law, a copy of which is herewith inclosed for your information and guidance.

Respectfully,

(Signed) D. W. BUSHYHEAD,
Principal Chief.

Appointment of Translator.

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
TAHLEQUAH, *December 24th, 1880.*

MR. H. T. LANDRUM.

SIR: Pursuant to the act of the National Council, "authorizing the compilation of the laws of the Cherokee Nation," approved November 19th, 1880, you are hereby respectfully informed that you have been appointed to translate the laws to be compiled according to said act. A copy of the act is herewith furnished you for your information and guidance.

Respectfully,

(Signed) D. W. BUSHYHEAD,
Principal Chief.

An Act Authorizing the Compilation of the Laws of the Cherokee Nation.

Be it enacted by the National Council, That the Principal Chief be, and he is hereby authorized to appoint two competent persons, one to collect and compile the laws of the Cherokee Nation now in force, together with the acts of the present session of the National Council, and the other to translate the same into the Cherokee language. That it shall be the duty of the com-

piler to classify and arrange, under an appropriate head, enactments pertaining to a particular subject; embrace in one act, as far as practicable, the original acts and amendments thereto, and **omit all acts that have been repealed or have become inoperative** by ceasing to be applicable to existing affairs, and to prepare an index to the same.

That the work above required shall be commenced and accomplished as soon as practicable, and when completed submitted to and approved by the Principal Chief.

That the Principal Chief is hereby authorized to appoint an Agent on part of the Cherokee Nation for the purpose of having the laws herein authorized to be compiled and translated, correctly published in book form to the number of two thousand copies in the English language, and one thousand and five hundred copies in the Cherokee language, as speedily as it can be done, for the use of citizens of the Cherokee Nation; *provided*, that the principal Chief shall require every person, before he furnishes any of the books herein provided for, to pay the actual costs per volume for publishing the same; that all moneys received by the Principal Chief on account of such books shall be by him quarterly turned over to the Treasurer of the Cherokee Nation.

Be it further enacted, That the Principal Chief is hereby authorized to draw warrants upon the National Treasury, payable out of any money belonging to the general fund, and not otherwise appropriated, on the certificate of the Agent herein provided for, to liquidate the expenses of said publication.

Be it further enacted, That the compensation of the compiler and the translator of the laws provided for in this act shall be each the sum of five hundred dollars, when their work as herein defined shall be completed and approved; *provided*, That the entire work herein provided for shall be completed, approved, and made

ready for publication on or before the first day of November, 1893, and the Principal Chief is hereby authorized to draw warrants accordingly.

Approved November 26, 1892.

C. J. HARRIS,
Principal Chief.

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
TAHLEQUAH, I. T., *January 3, 1893.*

Capt. J. L. ADAIR, Tahlequah, I. T.

DEAR SIR: I have the honor, as provided by an act of the National Council, entitled an "Act Authorizing the Compilation of the Laws of the Cherokee Nation," approved November 26, 1892, a copy of which is herewith submitted for your information, to inform you that you have been appointed to compile said laws, and receive compensation therefor, as provided in the act above referred to.

Very respectfully,

C. J. HARRIS,
Principal Chief.

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
TAHLEQUAH, I. T., *January 3, 1893.*

WILLIAM EUBANKS, ESQ., Tahlequah, I. T.

DEAR SIR: By authority of the act of the National Council "Authorizing the Compilation of the Laws of the Cherokee Nation," approved November 26, 1892, I have the honor to respectfully inform you that you have been appointed to do the work, and receive the pay of translator, as provided in the foregoing named act, a copy of which is herewith inclosed for your information.

Very respectfully,

C. J. HARRIS,
Principal Chief.

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
TAHLEQUAH, I. T., *April 14, 1893.*

I, C. J. Harris, Principal Chief of the Cherokee Nation, by authority in me vested by an act of the National Council, entitled, "An Act Authorizing the Compilation of the Laws of the Cherokee Nation," approved November 26, 1892, do hereby approve, as the laws of the Cherokee Nation, the compilation of said laws as made by John L. Adair, and translated by William Eubanks, appointed as such compiler and translator in pursuance of said act respectively, contained in this volume; **and do hereby declare the same to be in force as the laws of the Cherokee Nation until repealed or amended by the National Council.**

C. J. HARRIS,
Principal Chief Cherokee Nation.

CONSTITUTION.

The Eastern and Western Cherokees having again reunited, and become one body politic, under the style and title of the CHEROKEE NATION;

Therefore, We, the people of the Cherokee Nation, in National Convention assembled, in order to establish justice, insure tranquillity, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom—acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment—do ordain and establish this Constitution for the government of the Cherokee Nation.

ARTICLE I.

SECTION 1. The boundary of the Cherokee Nation shall be that described in the treaty of 1833, between the United States and Western Cherokees, subject to such extension as may be made in the adjustment of the unfinished business with the United States.

SEC. 2. The lands of the Cherokee Nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the Nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them: *provided*, that the citizens of the Nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this Nation, and becomes a citizen of any other government, all his rights and privileges as a citizen of this Nation shall cease; *provided, nevertheless*, that the National Council shall have power to readmit, by law, to all the rights of citizenship, any such person or persons who may, at any time, desire to return to the Nation, on memorializing the National Council for such readmission.

Moreover, the National Council shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper, to prevent citizens from monopolizing improvements, with the view of speculation.

ARTICLE II.

SECTION 1. The power of this government shall be divided into three distinct departments—the Legislative, the Executive, and the Judicial.

SEC. 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE III.

SECTION 1. The legislative power shall be vested in two distinct branches—a National Committee and Council—and the style of their acts shall be: *Be it enacted by the National Council.*

SEC. 2. The National Council shall make provision, by law, for laying off the Cherokee Nation into eight districts; and, if subsequently it should be deemed expedient, one or two may be added thereto.

SEC. 3. The National Committee shall consist of two members from each district, and the Council shall consist of three members from each district, to be chosen by the qualified electors in their respective districts for two years; the elections to be held in the respective districts every two years, at such times and places as may be directed by law.

The National Council shall, after the present year, be held annually, to be convened on the first Monday in October, at such place as may be designated by the National Council, or, in case of emergency, by the Principal Chief.

SEC. 4. Before the districts shall be laid off, any election which may take place, shall be by general vote of the electors throughout the Nation for all officers to be elected.

The first election for all the officers of the government: Chiefs, Executive Council, members of the National Council, Judges, and Sheriffs—shall be held at Tahlequah, before the rising of this convention; and the term of services of all officers elected previous to the first Monday in October, 1839, shall be extended to embrace,

in addition to the regular constitutional term, the time intervening from their election to the first Monday in October, 1839.

SEC. 5. No person shall be eligible to a seat in the National Council but a free Cherokee male citizen, who shall have attained to the age of twenty-five years.

The descendants of Cherokee men by all free women, except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this Nation, shall be entitled to all the rights and privileges of this Nation as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father's or mother's side, shall be eligible to hold any office of profit, honor, or trust under this government.

SEC. 6. The electors and members of the National Council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the National Council, in going to and returning.

SEC. 7. In all elections by the people, the electors shall vote *viva voce*.

All free male citizens, who shall have attained to the age of eighteen years, shall be equally entitled to vote at all public elections.

SEC. 8. Each branch of the National Council shall judge of the qualifications and returns of its own members, and determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member; but not a second time for the same offense.

SEC. 9. Each branch of the National Council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner

and under such penalty as each branch may prescribe.

SEC. 10. The members of the National Committee shall each receive from the public treasury a compensation for their services, which shall be three dollars per day during their attendance at the National Council; and the members of the Council shall each receive three dollars per day for their services during their attendance at the National Council; *provided*, that the same may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the National Council, by whom such alteration may have been made.

SEC. 11. The National Council shall regulate by law by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 12. Each member of the National Council, before he takes his seat, shall take the following oath or affirmation:

I, A. B., do solemly swear (or affirm, as the case may be,) that I have not obtained my election by bribery, threats, or any undue or unlawful means, used by myself or others, by my desire and approbation for that purpose; that I consider myself constitutionally qualified as a member of ———, and that on all questions and measures which may come before me, I will so give my vote, and so conduct myself, as in my judgment shall appear most conducive to the interest and prosperity of this Nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power, observe, conform to, support and defend the Constitution thereof.

SEC. 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit, or trust within this Nation.

SEC. 14. The National Council shall have power to make all laws and regulations which they shall deem

necessary and proper for the good of the Nation, which shall not be contrary to this Constitution.

SEC. 15. It shall be the duty of the National Council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties who may choose that summary mode of adjustment.

SEC. 16. No power of suspending the laws of this Nation shall be exercised, unless by the National Council or its authority.

SEC. 17. No retrospective law, nor any law impairing the obligation of contracts, shall be passed.

SEC. 18. The National Council shall have power to make laws for laying and collecting taxes for the purpose of raising a revenue.

SEC. 19. All bills making appropriations shall originate in the National Committee, but the Council may propose amendments or reject the same. All other bills may originate in either branch, subject to the concurrence or rejection of the other.

SEC. 20. All acknowledged treaties shall be the supreme law of the land, and the National Council shall have the sole power of deciding on the construction of all treaty stipulations.

SEC. 21. The Council shall have the sole power of impeaching. All impeachments shall be tried by the National Committee. When sitting for that purpose, the member shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 22. The Principal Chief, Assistant Principal Chief, and all civil officers, shall be liable to impeachment for misdemeanor in office, but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit under the government of this Nation.

The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

ARTICLE IV.

SECTION 1. The supreme executive power of this Nation shall be vested in a Principal Chief, who shall be styled "The Principal Chief of the Cherokee Nation."

The Principal Chief shall hold his office for the term of four years, and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members to the National Council.

The returns of the election for Principal Chief shall be sealed up and directed to the President of the National Committee, who shall open and publish them in the presence of the National Council assembled. The person having the highest number of votes shall be Principal Chief, but if two or more shall be equal and highest in votes, one of them shall be chosen by joint vote of both branches of the Council. The manner of determining contested elections shall be directed by law.

SEC. 2. No person, except a natural born citizen, shall be eligible to the office of Principal Chief; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years.

SEC. 3. There shall also be chosen at the same time by the qualified electors in the same manner, for four years, an Assistant Principal Chief, who shall have attained to the age of thirty-five years.

SEC. 4. In case of the removal of the Principal Chief from office, or of his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Assistant Principal Chief until the disability be removed or the vacancy filled by the National Council.

SEC. 5. The National Council may, by law, provide for the case of removal, death, resignation, or disability of both the Principal and Assistant Principal Chiefs, declaring what officer shall then act as Principal Chief until the disability be removed or a Principal Chief shall be elected.

SEC. 6. The Principal and Assistant Principal Chiefs shall, at stated times, receive for their services a compensation which shall neither be increased or diminished during the period for which they shall have been elected, and they shall not receive within that period any other emolument from the Cherokee Nation or any other government.

SEC. 7. Before the Principal Chief enters on the execution of his office he shall take the following oath or affirmation:

I do solemnly swear, or affirm, that I will faithfully execute the duties of Principal Chief of the Cherokee Nation, and will, to the best of my ability, preserve, protect, and defend the Constitution of the Cherokee Nation.

SEC. 8. He may, on extraordinary occasions, convene the National Council at the seat of government.

SEC. 9. He shall, from time to time, give to the National Council information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. It shall be his duty to visit the different districts at least once in two years, to inform himself of the general condition of the country.

SEC. 12. The Assistant Principal Chief shall, by virtue of his office, aid and advise the Principal Chief in the administration of the government at all times during his continuance in office.

SEC. 13. Vacancies that may occur in offices, the appointment of which is vested in the National Council, shall be filled by the Principal Chief during the recess of the National Council by granting commissions which shall expire at the end of the next session thereof.

SEC. 14. Every bill which shall pass both branches of the National Council shall, before it becomes a law, be presented to the Principal Chief. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that branch in which it may have originated, who shall enter the objections at large on their journals and proceed to reconsider it. If, after such reconsideration, two-thirds of that branch shall agree to pass the bill, it shall be sent, together with the objections, to the other branch, by which it shall likewise be reconsidered, and, if approved by two-thirds of that branch, it shall become a law. If any bill shall not be returned by the Principal Chief within five days (Sundays excepted), after the same has been presented to him, it shall become a law in like manner as if he had signed it, unless the National Council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SEC. 15. Members of the National Council, and all officers, executive and judicial, shall be bound by oath to support the Constitution of this Nation, and to perform the duties of their respective offices with fidelity.

SEC. 16. In case of disagreement between the two branches of the National Council with respect to the time of adjournment, the Principal Chief shall have power to adjourn the same to such time as he may deem proper; *provided*, it be not a period beyond the next constitutional meeting thereof.

SEC. 17. The Principal Chief shall, during the session of the National Council, attend at the seat of government.

SEC. 18. There shall be a council composed of five

persons, to be appointed by the National Council, whom the Principal Chief shall have full power at his discretion to assemble; he, together with the Assistant Principal Chief and the counselors, or a majority of them, may, from time to time, hold and keep a council for ordering and directing the affairs of the Nation according to law; *provided*, the National Council shall have power to reduce the number, if deemed expedient, after the first term of service, to a number not less than three.

SEC. 19. The members of the executive council shall be chosen for the term of two years.

SEC. 20. The resolutions and advice of the council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either branch of the National Council; and any counselor may enter his dissent to the majority.

SEC. 21. The Treasurer of the Cherokee Nation shall be chosen by a joint vote of both branches of the National Council for the term of four years.

SEC. 22. The Treasurer shall, before entering on the duties of his office, give bond to the Nation, with sureties, to the satisfaction of the National Council, for the faithful discharge of his trust.

SEC. 23. No money shall be drawn from the Treasury but by warrant from the Principal Chief, and in consequence of appropriations made by law.

SEC. 24. It shall be the duty of the Treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys at the annual session of the National Council.

ARTICLE V.

SECTION 1. The judicial powers shall be vested in a Supreme Court, and such circuit and inferior courts as the National Council may, from time to time ordain and establish.

SEC. 2. The Judges of the Supreme and Circuit Courts shall hold their commissions for the term of four years, but any of them may be removed from office on the address of two-thirds of each branch of the National Council to the Principal Chief for that purpose.

SEC. 3. The Judges of the Supreme and Circuit Courts shall, at stated times, receive a compensation which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the government of this Nation, or any other power.

SEC. 4. No person shall be appointed a judge of any of the courts until he shall have attained the age of thirty years.

SEC. 5. The Judges of the Supreme and Circuit Courts shall be elected by the National Council, and there shall be appointed in each district as many Justices of the Peace as it may be deemed expedient for the public good, whose powers, duties, and duration in office shall be clearly designated by law.

SEC. 6. The Judges of the Supreme Court and of the Circuit Courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

SEC. 7. No Judge shall sit on trial of any cause when the parties are connected [with him] by affinity or consanguinity, except by consent of the parties. In case all the Judges of the Supreme Court shall be interested in the issue of any cause, or related to all or either of the parties, the National Council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the Principal Chief.

SEC. 8. All writs and other process shall run "In the

name of the Cherokee Nation," and bear test and be signed by the respective clerks.

SEC. 9. Indictments shall conclude "Against the peace and dignity of the Cherokee Nation."

SEC. 10. The Supreme Court shall, after the present year, hold its session annually at the seat of government, to be convened on the first Monday of October in each year.

SEC. 11. In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature and cause of the accusation; of meeting the witnesses face to face; of having compulsory process for obtaining witnesses in his or their favor; and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage; nor shall the accused be compelled to give evidence against himself.

SEC. 12. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue, without describing them as nearly as may be, nor without good cause, supported by oath or affirmation.

SEC. 13. All persons shall be bailable by sufficient securities, unless for capital offenses, where the proof is evident or presumption great.

ARTICLE VI.

SECTION 1. No person who denies the being of a God or future state of reward and punishment, shall hold any office in the civil department in this Nation.

SEC. 2. The free exercise of religious worship, and serving God without distinction, shall forever be enjoyed within the limits of this Nation; *provided*, that this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this Nation.

SEC. 3. When the National Council shall determine the expediency of appointing delegates, or other public agents, for the purpose of transacting business with the Government of the United States, the Principal Chief shall recommend, and, by the advice and consent of the National Committee, appoint and commission such delegates or public agents accordingly. On all matters of interest, touching the rights of the citizens of this Nation, which may require the attention of the United States Government, the Principal Chief shall keep up a friendly correspondence with that Government through the medium of its proper officers.

SEC. 4. All commissions shall be "In the name and by the authority of the Cherokee Nation," and be sealed with the seal of the Nation, and signed by the Principal Chief. The Principal Chief shall make use of his private seal until a national seal shall be provided.

SEC. 5. A sheriff shall be elected in each district by the qualified electors thereof, who shall hold his office two years, unless sooner removed. Should a vacancy occur subsequent to an election, it shall be filled by the Principal Chief, as in other cases, and the person so appointed shall continue in office until the next regular election.

SEC. 6. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall the property of any person be taken and applied to public use without a just and fair compensation; *provided*, that nothing in this clause shall be so construed as to impair the right and power of the National Council to lay and collect taxes.

SEC. 7. The right of trial by jury shall remain inviolate, and every person, for injury sustained in person, property, or reputation, shall have remedy by due course of law.

SEC. 8. The appointment of all officers not otherwise

directed by this Constitution shall be vested in the National Council.

SEC. 9. Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education shall forever be encouraged in this Nation.

SEC. 10. The National Council may propose such amendments to this Constitution as two-thirds of each branch may deem expedient, and the Principal Chief shall issue a proclamation, directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election. And if, at the first session of the National Council after such general election, two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this Constitution; *provided*, that such proposed amendments shall be read on three several days in each branch, as well when the same are proposed as when they are ratified.

Done in convention at Tahlequah, Cherokee Nation, this sixth day of September, 1839.

GEORGE LOWREY,
President of the National Convention.

HAIR CONRAD, his X mark,
JOHN BENGE, his X mark,
ARCHIBALD CAMPBELL, his X mark,
THOMAS CANDY,
JOHN DREW,
GEORGE GUESS, his X mark,
WALTER SCOTT ADAIR,
YOUNG ELDERS, his X mark,
WILL SHOREY COODEY,
THOMAS FOREMAN,
RICHARD TAYLOR,

THOMAS FOX TAYLOR,
O-KAN-STO-TAH LOGAN, his X mark,
JAMES SPEARS, his X mark,
JOHN SPEARS,
STEPHEN FOREMAN,
YOUNG GLASS, his X mark,
LOONEY PRICE,
TOBACCO WILL, his X mark,
MAJOR PULLUM, his X mark,
MOSES PARRIS,
GEORGE WASHINGTON GUNTER,
KENCH LOGAN, his X mark,
YOUNG WOLF,
JOSEPH MARTIN LYNCH,
SAL-LA-TEE-SKEE WATTS, his X mark,
GEORGE BREWER, his X mark,
JOSHUA BUFFINGTON,
JESSE BUSHYHEAD,
JESSE RUSSELL,
JOHN FLETCHER BOOT, his X mark,
CRYING BUFFALO, his X mark,
BARK FLUTE, his X mark,
OO-LA-YO-A, his X mark,
SOFT SHELL TURTLE, his X mark,
EDWARD GUNTER,
DANIEL COLSTON, his X mark,
LEWIS ROSS,
GEORGE HICKS,
TURTLE FIELDS, his X mark,
ELIJAH HICKS,
TAHLAH-SEE-NEE, his X mark,
JAMES BROWN,
CHARLES COODEY,
RILEY KEYS,
DANIEL McCOY,
LEWIS MELTON.

Proclamation and Amendments to the Constitution.

ADOPTED NOVEMBER 26, 1866.

Proclamation by the Principal Chief.

WHEREAS, The National Council adopted certain amendments to the Constitution of the Cherokee Nation and submitted the same to a general convention of the people of the Cherokee Nation, called at Tahlequah, on the 26th day of November, A. D. 1866, and which said amendments, with the preamble thereto attached, were in the following words, to wit:

WHEREAS, By the treaty executed at Washington, on the 19th day of July, A. D. 1866, between the United States and the Cherokee Nation, through its delegation, ratified by the Senate and officially promulgated by the President of the United States, August 11, 1866, certain things were agreed to between the parties to said treaty, involving changes in the Constitution of the Cherokee Nation, which changes can not be accomplished by the usual mode; and

WHEREAS, It is the desire of the people and government of the Cherokee Nation to carry out in good faith all of its obligations, to the end that law and order be preserved and the institutions of their government maintained; therefore,

Be it Resolved by the National Council, That the following *amendments* to the Constitution of the Cherokee Nation be submitted to a convention of the Cherokee people, to assemble at Tahlequah, on the twenty-sixth (26th) day of November, A. D. 1866, under the

proclamation of the Principal Chief; and should said amendments hereunto annexed be ratified by said convention, then they shall be officially published and declared by the Principal Chief to be, and shall constitute, a part, or parts, of the Constitution of the Cherokee Nation.

AMENDMENTS.

Amendments to Article I.

SECTION 1. The boundary of the Cherokee Nation shall be that described in the treaty of 1833, between the United States and the Western Cherokees, subject to such modifications as may be made necessary by the 17th article of the treaty concluded at Washington City on the 19th day of July, 1866, between the United States and the Cherokee Nation.

SEC. 2. The lands of the Cherokee Nation shall remain common property until the National Council shall request the survey and allotment of the same, in accordance with the provisions of Article 20 of the treaty of 19th of July, 1866, between the United States and the Cherokee Nation.

Amendments to Article III.

SECTION 1. The Upper House of the National Council, known as the National Committee, shall be hereafter known and styled the Senate of the Cherokee Nation, and shall consist of two Senators for every district in the Cherokee Nation.

SEC. 2. The Council shall consist of two members from each district, and when a district shall have to exceed two hundred voters, it shall have an additional member, and for every additional two hundred voters in said district upwards of four hundred, it shall have an addi-

tional member; *provided*, that when any district shall have less than one hundred voters according to the census, it shall still be entitled to one representative.

SEC. 3. In order to ascertain and fix the representation to the Council, provided for by the preceding section, the National Council shall cause to be taken, as soon as practicable, a census of the population of the Cherokee Nation according to districts. A second census shall be taken in like manner in the year 1870 and each ten years thereafter, and the National Council shall regularly apportion representation among the several districts, as provided in the preceding section, agreeably to such census. The first apportionment provided for above shall be made before the first day of June and shall govern the election to be held on the first Monday in August, 1867.

SEC. 4. The National Council shall, after the present year, be held annually, to be convened on the first Monday in November, at such place as may be designated by the National Council, or, in case of emergency, by the Principal Chief.

SEC. 5. *No person shall be eligible to a seat in the National Council but a male citizen of the Cherokee Nation who shall have attained to the age of twenty-five years, and who shall have been a bona fide resident of the district in which he may be elected at least six months immediately preceding such election. All native born Cherokees, all Indians, and whites legally members of the Nation by adoption, and all freedmen who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months from the 19th day of July, 1866, and their descendants, who reside within the limits of the Cherokee Nation, shall be taken, and deemed to be, citizens of the Cherokee Nation.*

SEC. 6. The members of the National Council shall each receive from the public treasury a compensation for their services, which shall be three dollars per day, during their attendance at the National Council upon any regular session, not exceeding thirty days; *provided*, that the *per diem* allowance may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the National Council, by whom such alteration may have been made.

SEC. 7. All male citizens who have attained the age of eighteen years shall be deemed qualified electors of the Cherokee Nation, and there shall be no restrictions by law, save such as are required for persons convicted of crime, or for such limit as to residence, not exceeding six months in the district where the vote is offered, as may be required by census or registration.

Amendments to Article V.

SECTION 1. The Supreme Court shall consist of three judges, who shall be elected by the National Council, and whose duties, jurisdiction, and compensation shall be defined by law, in the manner prescribed by the Constitution. The National Council, at its annual session in 1867, shall elect one of the Supreme Judges for three years, one for two years, and one for one year, and at each annual session of the National Council thereafter, shall elect one Supreme Judge, whose official term shall be three years.

SEC. 2. The judges of the Circuit Court shall hereafter be elected by the people, for the term of four years, and shall have the same jurisdiction, discharge the same duties, and be compensated in the same manner as is now provided for by the Constitution. There shall be elected in like manner in and for each district as many judges as it may be deemed expedient for the public good,

whose powers, duties, and duration in office shall be clearly designated by law.

Amendments to Article VII.

SECTION 1. Neither slavery nor involuntary servitude shall ever hereafter exist in the Cherokee Nation, otherwise than in the punishment of crime, whereof the party shall have been duly convicted; and any provision of the Constitution of the Cherokee Nation conflicting with the foregoing section is hereby annulled.

SEC. 2. The persons now holding office shall continue therein, except as may be otherwise expressly provided by law for Canadian district, until their successors be commissioned in November, 1867.

Tahlequah, Cherokee Nation, November 26, 1866.

SMITH CHRISTIE,
President of National Committee.

Concurred: WRITER,
Speaker of Council.

Approved: WILL P. ROSS.

At a general convention of the people of the Cherokee Nation, held at Tahlequah, Cherokee Nation, on the 28th day of November, A. D. 1866, for the purpose of taking into consideration the foregoing *amendments* to the Constitution of the Cherokee Nation; and, whereof, Riley Keys, Chief Justice of the Supreme Court, was chosen President, and Budd Gritts Secretary; the said amendments to the Constitution of the Cherokee Nation were read, considered, and severally approved, and adopted by the Cherokee people.

In testimony whereof, the President and Secretary of said convention have subscribed the same at Tahlequah,

Cherokee Nation, on this the 28th day of November, A. D. 1866.

RILEY KEYS,
President of the Convention.

BUDD GRITTS,
Secretary.

AND WHEREAS, The foregoing amendments to the Constitution were duly submitted to the said general convention of the Cherokee people, and were severally read, considered, and adopted on the 28th day of November, A. D. 1866; now,

Therefore, Be it known that I, William P. Ross, Principal Chief of the Cherokee Nation, do issue this, my proclamation, declaring said amendments to be a part of the Constitution of the Cherokee Nation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, this the 7th day of December, A. D. 1866.

WILL P. ROSS,
Principal Chief.

Departmental Construction of Section 5, Amendments to Article III of the Cherokee Constitution.

I. T. D. J. R. W.
9086-1903 W. C. P.
6554-1904. S. V. P.

DEPARTMENT OF THE INTERIOR,
Office of the Assistant Attorney General,
WASHINGTON.

February 2, 1905.

The Secretary of the Interior.

SIR: I have again considered the record in the case of Allie Williams, applicant for enrollment by the Commission to the Five Civilized Tribes, as a citizen by blood

of the Cherokee Nation, subject of my opinion of November 12, 1904. This reconsideration was informally requested, as counsel for the applicant deemed the conclusion reached to be at variance with departmental decisions of June 10 and 11, 1903, in cases of Martha Hill and James W. Shirley, and also for correction of a supposed error in the statement of facts found by the Commission to the Five Civilized Tribes.

Applicant was born of Cherokee blood, in Tennessee, or North Carolina, about 1869, and was admitted by the National Council, with her parents, December 2, 1892, when about twenty-three years old. In November, 1882, she went to the Nation and remained until July, 1883, when she returned with her parents to Tennessee. Nothing in the record indicates that the family intended to remain in the Nation. Her parents removed to the Nation in 1894, where her father owned a house, and they resided there until his death in 1897. She remained in Tennessee, teaching, until she removed too and settled in the Nation, in 1896, and has since resided there. She is identified on the 1896 census roll, and, as stated by the Commission in a letter of November 30, filed in the case December 7, 1904, is identified on the 1894 strip payment roll. She was properly on that roll, as she was not then barred by the act of December 4, 1894.

September 26, 1900, the Commission directed she be listed for enrollment, but February 2, 1903, receded therefrom, and held that by act of the National Council of December 4, 1894, her failure to remove to and permanently locate in the Nation within six months thereafter, she was barred of her right. March 3, 1903, the Indian Office recommended affirmance of this action, and it was affirmed by the Department March 10, 1903. Later the Department ordered reconsideration, and September 26, 1903, the Indian Office stated its opinion to be that

the act of June 28, 1898 (30 Stat., 495, 502), extended the limit fixed by the Cherokee act of December 4, 1894, to expire June 28, 1898, and that applicant was entitled to enrollment, having removed to and located in the Nation before that time. My opinion being requested, I, December 29, 1903, rendered opinion that the act of December 4, 1894, was within the powers of the Cherokee Council; that the act of June 28, 1898, *supra*, was not inconsistent therewith and did not extend the limit thereby fixed, and that applicant was properly denied enrollment.

A motion for review of that opinion was filed upon two grounds: (1) that applicant in legal effect complied with the Cherokee act of December 4, 1894, when her parents actually removed permanently to the Nation in 1894; (2) that applicant's Cherokee blood and removal to the Nation under section 5 of amendments to Article III of the Cherokee Constitution entitle her to enrollment, her removal having been made before the bar imposed by the act of June 28, 1898.

November 12, 1904, I expressed the opinion that as applicant was of full age and entitled to choose her domicile, her domicile and citizenship were not changed by removal of her family, nor yet by any intent she may have formed until such intent was effectuated by some act; that act and intent must concur to effect such result. This part of the opinion is not excepted to, and I assume that this contention is abandoned.

Section 5, amendments to Article III of the Cherokee Constitution, is as follows:

> "All native born Cherokees, all Indians, and whites legally members of the Nation by adoption, and all freed men who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return

> within six months from the 19th day of July, 1866, and their descendants, who reside within the limits of the Cherokee Nation, shall be taken, and deemed to be, citizens of the Cherokee Nation."

My opinion of November 12, 1904, in construction of this provision, was thus expressed.

This, in substance, omitting phrases not pertinent to the appellant's case, is that:

> "All native born Cherokees (and) all Indians, . . . who reside within the limits of the Cherokee Nation, shall be taken, and deemed to be, citizens of the Cherokee Nation."
>
> "This amounts to no more than a declaration of what classes of persons then existing constituted the Cherokee Nation. The language is in the present tense, 'who (now) reside.' The applicant, though of Cherokee blood, was not a 'native born Cherokee.'"

It is claimed by counsel for applicant that this language is inconsistent with the construction given to this provision by departmental decisions in cases of James W. Shirley and Martha Hill, *supra*, prepared in my office, and wherein respectively this section of the Constitution was thus construed:

> "This provision does not say 'who now reside.' It is not merely definitive, limited to then existing conditions, but was evidently intended to operate prospectively through all time. . . .
>
> "The constitutional provision cited does not limit the right of descendants of citizens to citizenship to those then resident in the Nation. To give it such restrictive effect, 'now' or some word of like import must be inserted. That such restriction was not intended was indicated by the fact that the right of citizenship was conferred upon one or more classes of persons, some of whom were then absent from the Nation, with a restriction that they should reestablish residence within

six months from July 19, 1866. Descendants from citizens would not be given less time presumably than that given freedmen who were never citizens and had no blood right. As to all citizens of whatever class it provided that 'their descendants, who reside within the limits of the Cherokee Nation, shall be taken and deemed to be, citizens.'

"By no recognized rule of statutory or constitutional construction can a limitation to present time be read into a provision which necessarily is intended to operate prospectively through all time."

Upon reexamination of the section, I am of opinion that the intent and scope of the section, and effect to be given its language are properly expressed in the departmental decisions, as above quoted. *The language is in the present tense and the section is definitive of what persons then constituted the Cherokee Nation. It was also intended to operate during the whole continuance of the Cherokee Nation as definitive of what persons at any time then or future are its citizens. The classes mentioned are: (1) native born Cherokees; (2-3) all Indians, and whites legally adopted; (4) all freedmen and colored persons complying with the treaty of 1866; (5) descendants of these classes.*

The present contention is that "native born Cherokees" must be construed as equivalent to "one of Cherokee blood," or descent; that these expressions are synonymous. I can not accede to that contention.

In adopting a constitution the Cherokees were giving a written and definite form to their government. They were already a State, recognized by treaties by the United States, by the treaties of 1833 and 1835 guaranteed a seat and territory as a home, with a title thereto by patent from the United States (7 Stat., 478-480). Native born Cherokees in natural import means persons born to the allegiance of this State, the Cherokee Nation. All

persons born to that allegiance, who resided in the Nation, and had not become expatriated, together with the other classes named, were by this section declared to be citizens of the Cherokee Nation.

This construction is not only the natural import of the words, but harmonizes with the next provision, that Indians or others might be legally adopted—that is, admitted into the Nation. Nothing in the section justifies the construction that one of Cherokee descent, but not member of the Nation, might acquire citizenship by his own act of entering into and settling upon its territory. The constitution of a State is for the purpose of protecting rights of its citizens, and those not of its citizenship can not claim rights thereunder and are not within its purview.

The constitution has never in practice of the Nation been regarded as conferring rights upon persons of Cherokee descent who had not been born to nor admitted to its allegiance. The necessity of their admission was in practice constantly recognized by acts of admission, and acts conferring such powers upon citizenship, courts and commissions.

As said in my former opinion, it was within the legislative powers of the council to fix a period within which one admitted, or a citizen absenting himself should lose his right. That is all that the act of December 4, 1894, attempted to do, and I see no constitutional or other objection to its validity.

In the case of Martha Hill the applicant was of Cherokee blood, her father being admitted by the council after she was of full age. She removed to the Nation in 1886 and ever afterward resided there. She and her children were placed on the tribal rolls of 1890 and 1894, the first of which was prepared under an act containing many provisions for its scrutiny and correction. In Shirley's case the facts were that he was born of a Cherokee

father and white mother, and had always resided in the Nation. He was allowed to vote, and had been convicted before the Indian courts of some offense, sentenced to imprisonment, pardoned and restored to the "full right of citizenship" by the Principal Chief. Such conviction could only have been made of an Indian. His parents were never married. The question involved was, whether the son of a Cherokee citizen and a white woman, born out of wedlock, was a "descendant" from his father. The Department held that "descendants" included illegitimates, and that Shirley's descent from a Cherokee citizen was sufficiently and satisfactorily shown.

In neither of these cases was any question under the Cherokee act of December 4, 1894, involved. Upon full consideration of the question, I am satisfied that the act was a valid exercise of the legislative powers of the Cherokee Nation—not a violation of its constitution; that by failure to return within the time thereby fixed the applicant was barred of right of citizenship of the Nation.

Such holding is not inconsistent with the departmental decisions in Martha Hill or James W. Shirley.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved: February 2, 1905.

E. A. HITCHCOCK,
Secretary.

The act of December 4, 1894, provides:

> "That all persons who have been or may hereafter be readmitted to citizenship in the Cherokee Nation, are hereby required to permanently locate within the limits of the Cherokee Nation, within six months from the passage of this act, or from the date of the readmission of persons hereafter readmitted, or no rights whatever shall accrue to

such persons by reason of such readmission: Provided, that nothing in this act shall bar minors and orphans."

Articles of Agreement With the Delawares.

Made this 8th day of April, A. D. 1867, between the Cherokee Nation, represented by William P. Ross, Principal Chief, Riley Keys and Jesse Bushyhead, delegates, duly authorized parties of the first part, and the Delaware tribe of Indians, represented by John Connor, Principal Chief, Charles Journeycake, Assistant Chief, Isaac Journeycake and John Sarcoxie, delegates for and on behalf of said Delaware tribe, duly authorized, witnesseth:

Whereas, by the 15th article of a certain treaty between the United States and the Cherokee Nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country, east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee Nation, subject to the approval of the President of the United States; *and whereas*, by a treaty between the United States and the Delaware tribe of Indians, ratified August 10th, 1866, the removal of the said Delawares to the Indian country, south of Kansas, was provided for, and in the 4th article whereof an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; *and whereas*, no such cession of land was made by the Cherokees to the United States, but in lieu thereof terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; *and whereas*, a full and free conference has been

held between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands, and their consolidation with said Cherokee Nation; now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments, and the fulfilment of certain conditions hereinafter mentioned, agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to 160 acres of land for each individual of the Delaware tribe who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the office of Indian Affairs, being the list of the Delawares who elect to remove to the "Indian country," to which list may be added, only with the consent of the Delaware Council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto; *and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line of 96°, not already selected and in possession of other parties; and in case the Cherokee lands shall hereafter be allotted among the members of said Nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions, when surveys are made (that is to say, 160 acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation; nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same condi-*

tions and restrictions as are, by the laws of the Cherokee Nation, imposed upon the native citizens thereof. PROVIDED, *that nothing herein shall confer the right to alienate, convey, or dispose of any such lands, except in accordance with the Constitution and laws of said Cherokee Nation.*

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees, from the Delaware funds, now held or hereafter received by the United States, a sum of money, equal to one dollar per acre, for the whole amount of 160 acres of land, for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for. And the Secretary of the Interior is authorized and requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but, in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such United States bonds to the Cherokee Nation, at their market value at the date of such transfer. And the said Delawares further agree that there shall be paid from their funds, now and hereafter to come into possession of the United States, a sum of money, which shall sustain the same proportion to the existing Cherokee National fund that the number of Delawares registered as above mentioned, and removing to the Indian country, sustains to the whole number of Cherokees residing in the Cherokee Nation. And, for the purpose of ascertaining such relative numbers, the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares; and an accurate census of the Cherokees residing in the Cherokee Nation shall be taken, under the laws of that Nation, within four months, and

properly certified copies thereof filed in the office of Indian Affairs, which shall be the basis of calculation as to the Cherokees. And, that there may be no doubt hereafter as to the amount to be contributed to the Cherokee National fund by the Delawares, it is hereby agreed, by the parties hereto, that the whole of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000. And the Delawares further agree, that in calculating the total amount of said National fund, there shall be added to the said sum of $678,000 the sum of $1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee National fund $1,678,000, and this last mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund; *provided*, that, as the $678,000 of funds now on hand, belonging to the Cherokees, is chiefly composed of stocks of different values, the Secretary of the Interior may transfer, from the Delawares to the Cherokees, a proper proportion of the stocks now owned by the Delawares, of like grade and value, which transfer shall be in part of the *pro rata* contribution herein provided for by the Delawares to the funds of the Cherokee Nation; but the balance of the *pro rata* contribution by the Delawares to said fund shall be in cash or United States bonds, at their market value. All cash, and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under this agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees, of August 11, 1866.

On the fulfilment by the Delawares of the foregoing stipulations, all the members of the tribe, registered as above provided, shall become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other) in the national

funds, as native Cherokees, save as hereinbefore provided. And the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokees.

WM. P. ROSS,
Principal Chief,
RILEY KEYS,
Cherokee Delegation.

JOHN CONNOR, his X mark,
Principal Chief,
CHARLES JOURNEYCAKE,
ISAAC JOURNEYCAKE,
JOHN SARCOXIE, his X mark,
Delaware Delegation.

Executed and delivered in our presence by the above named delegates of the Cherokee and Delaware Nations, at the city of Washington, in the District of Columbia, the day and year first above written.

JOHN G. PRATT.
WM. A. PHILLIPS.
EDWARD S. MENAGUS.

Ratified by the National Committee, June 15, 1867.

SMITH CHRISTIE,
President Nat. Committee.
JNO. YOUNG,
Speaker of Council.

Agreement Between Shawnees and Cherokees, Concluded June 7th, 1869. Approved by the President, June 9th, 1869.

Articles of Agreement, made and entered into at Washington, D. C., this seventh day of June, A. D. 1869, by and between H. D. Reese and William P. Adair, duly authorized delegates representing the Cherokee Nation of

Indians, having been duly appointed by the National Council of said Cherokees, parties of the first part, and Graham Rogers and Charles Tucker, duly authorized delegates representing the Shawnee Tribe of Indians, parties of the second part, witnesseth:

WHEREAS, It is provided by the fifteenth article of the treaty between the United States and the Cherokee Indians, concluded July 19th, 1866, that the United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with certain provisions specified in said article; and

WHEREAS, The Shawnee Tribe of Indians are civilized and friendly with the Cherokees and adjacent tribes, and desire to settle within the Cherokee country on unoccupied lands east of 96°.

It is therefore agreed, by the parties hereto, that such settlement may be made upon the following terms and conditions, viz:

That the sum of five thousand dollars belonging to the Shawnee Tribe of Indians, and arising under the provisions of treaties between the United States and said Shawnee Indians, as follows, viz:

For permanent annuity for educational purposes, per fourth article treaty, 3d August, 1795, and third article, 10th of May, 1854, one thousand dollars;

For interest, at five per centum, on forty thousand dollars for educational purposes, per third article treaty, 10th May, 1854, two thousand dollars;

For permanent annuity, in specie, for educational purposes, per fourth article treaty, 29th September, 1817, and third article, 10th May, 1854, two thousand dollars; shall be paid annually to the Cherokee Nation of

said Indians, and that the annuities and interest, as recited, and the investment or investments upon which the same are based, shall hereafter become and remain the annuities and interest and investment or investments of the Cherokee Nation of Indians, the same as they have been the annuities and interest and investments of the Shawnee Tribe of Indians. And that the sum of fifty thousand dollars shall be paid to the said Cherokees, as soon as the same shall be received by the United States, for the said Shawnees, from the sale of the lands in the State of Kansas known as the Absentee Shawnee Lands, in accordance with the resolution of Congress, approved April 7th, 1869, entitled: "A resolution for the relief of settlers upon the Absentee Shawnee Lands in Kansas," and the provisions of the treaty between the United States and the Shawnee Indians, concluded May 10th, 1854, and, also, that the said Shawnees shall abandon their tribal organization.

And it is further agreed by the parties hereto that in consideration of the said payments and acts agreed upon, as hereinbefore stated, that the said Cherokees will receive the said Shawnees—referring to those now in Kansas, and, also, to such as properly belong to said tribe who may be at present elsewhere, and including those known as the Absentee Shawnees, now residing in Indian Territory—into the country of the said Cherokees, upon unoccupied lands east of 96°, and that the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect, and with all the privileges and immunities of native citizens of said Cherokee Nation; PROVIDED, *that all of said Shawnees who shall elect to avail themselves of the provisions of this agreement, shall register their names, and permanently locate in the Cherokee country, as herein provided, within two*

years from the date hereof; otherwise they shall forfeit all rights under this agreement.

IN TESTIMONY WHEREOF, The parties hereto have hereunto subscribed their names and affixed their seals on the day and year first above written.

(Seal) H. D. REESE,
(Seal) WM. P. ADAIR,
Delegates representing the Cherokee Nation of Indians.

(Seal) GRAHAM ROGERS,
(Seal) CHARLES TUCKER,
Delegates representing the Shawnee Tribe of Indians.

Attest:
W. R. IRWIN,
H. E. MCKEE,
A. N. BLACKLEDGE,
JAS. B. ABBOTT.